TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 251.

GEORGETTE A. CHAMBERLIN, FRANK T. CHAMBERLIN, THE CAPITAL TRUST COMPANY, ET AL., APPELLANTS,

vs.

HORATIO BROWNING AND ALPHEUS MIDDLETON, TRADING AS BROWNING & MIDDLETON; THOMAS E. KEANE, ET AL.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

FILED APRIL 4, 1899.

(17,351.)

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1 In the Court of Appeals of the District of Columbia.

THOMAS T. KEANE ET AL., Appellants,
vs.
GEORGETTE A. CHAMBERLIN ET AL. } No. 860.

Supreme Court of the District of Columbia.

GEORGETTE A. CHAMBERLIN ET AL.
vs.
HORATIO BROWNING ET AL. } In Equity. No. 19686.

UNITED STATES OF AMERICA,
District of Columbia, } *ss:*

Be it remembered that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

Bill for Accounting and Injunction.

Filed August 25, 1898.

In the Supreme Court of the District of Columbia.

GEORGETTE A. CHAMBERLIN, FRANK T. Chamberlin, The Capital Trust Company, Wash. B. Williams, Henry M. Dexter, Gustave Lansburgh and James Lansburgh, the Last Two Trading as Lansburgh & Bro.: Andrew W. Kelley and Edward H. Chamberlin, Trading as Kelley and Chamberlin, and William Galt, Plaintiffs,
vs.
HORATIO BROWNING, JOHN B. SCOTT, Alpheus Middleton, Thomas T. Keane, The Central National Bank of Washington, Edward O. Whitford, and Timothy D. Daly, Defendants. } In Equity. No. —, Doc. —.

The plaintiffs state as follows:

1. That they are all citizens of the United States, resident in the District of Columbia, except the Capital Trust Company, which is a corporation organized under the laws of Virginia, but having its principal place of business in said District. The plaintiff
2 Georgette R. Chamberlin sues as the executrix of the will of Franklin Tenney, and the other plaintiffs sue in their own right as creditors of the defendant Scott and beneficiaries under the deed of assignment hereinafter set forth.

2. That the defendants are all citizens of the United States, resident in the District of Columbia, except the Central National Bank of Washington, which is a corporation created under the national banking laws of the United States, having its habitat and principal place of business in said District. The defendant Browning is sued in his own right and as a member of the firm of Browning and Middleton and also as assignee under the deed of assignment hereinafter mentioned; the defendant Middleton is sued as a member of said firm of Browning and Middleton, and the other defendants are sued in their own right.

3. That on the 24th day of April, 1896, the defendant Scott, then residing and carrying on business exclusively in the city of Washington, in said District, made, executed, acknowledged, and delivered in said District to the defendant Browning, then also a resident of said District, his certain deed of assignment conveying to said Browning, his heirs, executors, administrators, and assigns, for the benefit of his, the said Scott's, creditors, among them all the plaintiffs and all the defendants (except said Scott), all his, said Scott's, estate, real and personal, the descriptive portion of said deed being as follows: "all and singular the real estate, goods, chattels, merchandise, effects, stocks, promissory notes, debts, claims, demands, and property of him, the said party of the first part (except all legal exceptions which are hereby reserved by said party of the first part), the same being fully described in Schedule 'A' hereto annexed;" that the said Schedule "A" contained, among other things, the following item: "Estate for life of said party of the first part in 25 acres of land in Montgomery county, State of Maryland, particularly described in deed recorded in Liber J. A. No. 11, folio 241 *et seq.*, of the land records of said county," said deed being the deed from Coughlan to Scott, hereinafter referred to in the 9th paragraph of this bill. The said schedule also contained items of certain real estate and personalty of the assignor in the District of Columbia, not necessary here and now to recapitulate. The trust created by said deed of assignment in the assignee was in the usual form as to taking possession, selling, and distributing, and said trust was accepted in writing by said Browning at the foot of said deed, and he caused the same to be recorded the next day, April 25, 1896, in Liber 2125, folio 4, land records of said District, and a copy thereof is filed herewith as Exhibit No. 1 and prayed to be read and considered as part of this bill.

4. That all the defendants had actual as well as constructive notice of the execution of said deed of assignment, and elected to accept the provisions thereof by, as the plaintiffs aver they all did, attending creditors' meetings called by the assignee, voting as to the disposition of the estate and accepting dividends paid by the assignee from the proceeds thereof.

3 5. That on or about the 10th day of May, 1896, the defendant Browning received back from the office of the recorder of deeds in this District the said original deed of assignment and retained same in his possession until June 3, 1896, when he caused

same to be recorded in the land records of Montgomery county, Maryland.

6. That meanwhile, to wit, on the 1st day of May, 1896, the defendant Thomas T. Keane filed in the circuit court of Montgomery county his certain action of debt for $737.54, and on May 23, 1896, his certain other action *for* debt for $242.36, against said Scott, and wrongfully and in violation of the terms of said deed of assignment, of which he had actual notice, and the provisions and benefits of which he had recognized and accepted, as hereinbefore set forth, caused to be levied attachments on said Montgomery County land to enforce said claims on the ground that said Scott was a non-resident of Maryland, and has proceeded with said attachments, as hereinafter set forth.

7. That afterwards and subsequent to the recording of said deed of assignment in Montgomery county and after all the defendants had accepted the provisions and benefits thereof, as aforesaid, the defendants did each and all file their certain actions of debt against said Scott in said Montgomery circuit court as follows: Thomas T. Keane, June 15, 1896, for $849.64; Browning and Middleton, as partners, September 29, 1896, for $2,217; The Central National Bank, September 29, 1896, for $3,049.69; Edward O. Whitford, Sept. 28, 1896, for $535.80; Timothy D. Daly, Oct. 20, 1896, for $1,173.83, and wrongfully and in violation of the terms of said deed of assignment, of which they each and all had actual notice, and the provisions and benefits of which they had recognized and accepted, as hereinbefore set forth, caused to be levied attachments on said Montgomery County land to enforce their said respective claims on similar grounds, and have proceeded with said attachments, as hereinafter set forth.

8. That on the 11th day of November, 1896, the said Keane obtained in said Montgomery circuit court on his said three claims, known on the docket respectively as "No. 57, Trials," "No. 63, Trials," and "No. 1, Appearances," judgments of condemnation for the respective amounts thereof, and on the 22 day of March, 1897, the said Browning and Middleton, Central National Bank, Whitford and Daly obtained in said court on their said respective claims, known on the trial docket respectively as Nos. 40, 42, 44, and 38, judgments of condemnation for the respective amounts thereof.

9. That on the 22nd day of December, 1896, said Keane filed in said circuit court for Montgomery county his certain bill in equity against the defendant Scott and his two daughters, Mary Elizabeth and Margaret Adelia, and one John D. Coughlan, wherein he alleges, among other things, that said Scott was on October 17, 1888, the owner in fee simple of said 25 acres of land, therein more particularly describing it, and had on said day, without any consideration, but voluntarily, conveyed it in fee-simple to said Coughlan, who had conveyed it back to said Scott, his heirs and
4 assigns, to the use of the said Scott, his heirs and assigns, upon the following trusts: "In trust for the said John B. Scott during his life to retain possession of said parcel of land and premises, without impeachment for waste, and receive the rents,

issues, and profits thereof for his own use and benefit, and from and after his death to hold said parcel of land and premises unless the same shall be disposed of as hereinafter authorized for the use and benefit of Mary Elizabeth Scott and Margaret Adelia Scott, daughter- of said John B. Scott, their heirs and assigns forever, as tenants in common; and upon this further trust, that said John B. Scott shall have full power and authority to lease or sell said parcel of land or any part thereof from time to time and convey the same in fee-simple absolute or by way of mortgage, deed of trust, or otherwise, and upon such terms and for such conditions as said John B. Scott may deed fit, and without obligation on the part of the purchaser to see to the application of the purchase-money or the person lending money to see to the application thereof, and to devise and to dispose of said parcel of land and premises by last will and testament executed according to law."

And that said conveyances were made with an intention and view of his, the said Scott's, becoming subsequently indebted and with the intent to hinder, delay, and defraud any one to whom he might thus subsequently become indebted, and that said conveyance from Coughlan to Scott gave to him all the rights, privileges, and advantages of a fee-simple owner, and that by the reservation of the powers therein contained he, said Scott, was intended to become and was the fee-simple owner, subject to no binding trusts, which said allegations these plaintiffs say were substantially true, and setting forth his three said attachments and judgments of condemnation, and that he was desirous of having all the interest of said Scott in said lands sold under a writ of "*fieri facias*" for the satisfaction of said judgments; by reason of said two deeds their sale at a fair valuation was obstructed and rendered impossible and no one could be obtained to purchase the interest of said Scott at more than a nominal sum, and praying for a receiver to take possession of said lands, and that said two deeds might be declared to be void, removed, vacated, and annulled; that said defendants, on February 15, 1897, answered said bill, admitting in substance all the facts alleged in said bill and denying only any fraudulent intent in the deeds; and said cause, at the June term, 1897, was heard on said bill and answer, the only questions arising being those arising from the construction of the terms in said deed from Coughlan to Scott, and on the 28th day of June, 1897, the court filed its opinion in said cause, wherein, among other things, it held that "In this deed the power is not a mere incident to the life estate reserved by the grantor, but it so thoroughly dominates and controls every other provision of the deed as to be equivalent to the entire fee-simple interest in the property," and on the 16th day of July, 1897, passed final decree setting aside and declaring to be null and void, to all intents whatsoever, said two deeds, so far as the same might interfere with or in any manner affect the rights and claims of the said Keane as creditor, and the defendants appealed from said decree to the court of appeals of Maryland, which, on June 28, 1898, affirmed said decree.

10. That on July 23, 1898, the said Keane filed in the clerk's

office of the lower court the mandate of affirmance and caused to be issued on his judgment, No. 57, for $737.54, a writ of "*fieri facias*," directed to the sheriff of Montgomery county, who has advertised the said land for sale thereunder on August 27, 1898, for cash in hand; that said farm is worth about $15,000, as plaintiffs are advised and believe, but will not realize nearly that sum if sold for cash and at sheriff's sale, but said sale will take place as advertised unless said Keane is restrained from completing it by order of this court, thereby producing great and irreparable injury to the plaintiffs and other creditors of said Scott under the deed of assignment mentioned in the 3d paragraph of this bill.

11. That the plaintiffs are each and all creditors under said deed of assignment for debts therein mentioned and scheduled, to wit, the plaintiff Georgette T. Chamberlin, as executrix of Franklin Tenney, holds and owns eleven (11) notes, one for $6,765.34; two for $2,000 each; one for $3,000; three for $2,598.54 each; one for $1,300; one for $650; one for $500, and one for $1,100; that plaintiff Frank T. Chamberlin holds and owns one note for $250; the plaintiff The Capital Trust Company holds seven notes respectively for $250, $150, $500, $400, $600, $558.90, and $300, endorsed to it, some for value and some for collection; the plaintiff Williams holds and owns two notes, one for $308.48, and the other for $450; the plaintiff Dexter holds and owns three notes respectively for $100, $104.82, and $300, and an account for work, $210.79, and the plaintiffs Lansburgh and Bro. holds and owns two notes, one for 6,200, and one for $475.00, and an open account for merchandise of $19.75; the said Kelley and Chamberlin hold and own a note for $1,087.08 and an open account for merchandise for $297.44, and the said William Galt holds and owns a note for $1,000, for all of which said Scott is and was at the date of his said assignment liable and none of which have been paid, except dividends of 12 and 4 per cent. paid by said Browning out of the assets, as hereinafter more particularly set forth.

12. That it was the intention of said Scott, well known to said Browning, to convey, as he states in his deed of assignment, all his property except legal exceptions, and the use of the term "estate for life" in reference to the Maryland land was an attempt to describe all the interest which he had therein, and had he known that the courts would hold that the deed under which he held was constructively fraudulent in its limitations and vested in him the fee-simple he would have so listed it in his schedule. The proper construction that should be given the granting clause and schedule together is that all title which said Scott had in said land passed by the deed of assignment, and in any event, as plaintiffs are advised, believe, and therefore allege, the grantor being a resident of the District of Columbia and the deed of assignment having been made in said
District, it vested in the assignee all property of said Scott,
6 wherever situated, irrespective of the schedule, at least so far
as concerns citizens or residents of said District; that it was the duty of said assignee to at once take possession of said Maryland farm, as well as all other property, which he failed and neg-

lected to do, but instead thereof attempted and undertook, as hereinafter stated, to ignore said deed of assignment so far as related to said farm and to convert same, in part at least, to his own use.

13. That said Browning did, as assignee, take charge of the assets of said Scott located in the District, but to what extent or value or what disposition he has made of them is unknown to plaintiffs, except that he sold the leasehold interest and furniture of two hotels, one of them being the National hotel, which he sold for $16,500.00 when he had an offer of $18,000.00 for it by another responsible bidder. He also sold some Washington real estate, but at what price plaintiffs do not know, and collected some money for said Scott and realized some profit by running the hotel for a short time, but as to figures on these points the plaintiffs are totally in the dark, the said Browning, although thereto requested by the plaintiffs, having failed and practically refused to render them any account further than to declare two dividends, one of 12 per cent., Aug. 20, 1886, and one of 4 per cent., about June 10, 1897. There was also a large amount of stock and farm equipments of great value on said Maryland farm, but whether said Browning, as assignee, ever took possession or not these plaintiffs are not advised, nor as to whether he ever took possession of all the assets in the District or has converted them all into money, nor as to the account or calculation by which the two dividends aforesaid were reached.

14. That the said Browning not only failed to take charge of the Maryland property, as was his duty, but he imperiled its safety from seizure by delaying the recording of the deed of assignment there, and by failure to give bond as required by the Maryland statute, and then attempted to take advantage of his own wrong by attaching the land for a debt due his firm, as aforesaid, and *and* causing it to be attached for a debt due to the Central national bank, of which he was a stockholder, director, and vice president.

That all said attaching creditors were represented by the same attorneys and moved in harmony, with the understanding that said Keane's equity suit was to enure to the benefit of all and all the claims sued on were for debts existing at the time of said assignment. The proceedings, as plaintiffs are advised, were taken on the theory that the deed of assignment, so far as it covered the Maryland property, had not passed title even to the life estate, because of a provision in the Maryland statute that no title should pass until the assignee or trustee gave a bond; but plaintiffs are advised that a proper construction of that statute is that it is for assignments made by residents only and for the protection only of resident creditors and does not affect non-resident assignments, or that it, in any event, would be grossly inequitable and unjust to permit the said Browning, either individually or for his firm or his bank, to levy attachments on and take to his or its own
7 use the assigned property, instead of proceeding as assignee to have the cloud removed and utilize the property for the benefit of those — whom he had been chosen and by his solemn deed consented to represent; and that as to the other defendants

who attached the said property the plaintiffs claim that they are estopped to deny the validity of said deed of assignment as to any of the property of the assignor or its sufficiency to pass the title, because, as the plaintiffs reiterate, they each and all attended creditors' meetings called under it, voted thereat, and accepted the two dividends declared as aforesaid.

15. That, in addition to the other wrongful acts of said Browning in violation of his trust, he afterwards, on the — day of December, 1897, filed another suit in his own name in said Montgomery circuit court and levied an attachment for $1,409.50 on said land, and on January 17, 1898, recovered judgment of condemnation in "No. 81 Appearances" for said amount; that the acts aforesaid of said Browning show that he is not a fit and proper person further to be charged with the execution of said trust created by said deed of assignment, and that by his neglect, default, and wrong-doing he has forfeited all right to any commission or compensation for his services.

The premises considered, the plaintiffs pray as follows:

One. That the writ of subpœna be issued, commanding the defendants severally to appear and answer the exigency of this bill.

Two. That the defendant Browning be required with his answer to exhibit an account of the assets that came to his hands and of the manner in which he has disposed of same.

Three. That the defendant Scott in his answer disclose the location and character of any property not mentioned in the schedule, but owned by him at date of the assignment.

Four. That said Browning be removed as assignee and a trustee appointed in his stead to execute said trust, and said Browning required to turn over to him any balance or assets in his hands.

Five. That said Scott be required, if need be, to execute to said new trustee a deed more specifically conveying the fee-simple title to said Maryland land.

Six. That the attaching creditors be restrained, pending this action, from in any manner proceeding to enforce their said attachments on judgments of condemnation against said Maryland land, and from doing any act or thing to hinder, delay, or interfere with the control or management of the estate abroad for the equal benefit of all said Scott's creditors, and from in any way seeking to secure to themselves any greater benefit or interest out of said estate and effects than shall represent their "*pro rata*" share under said assignment, and that on final hearing such injunction be made perpetual.

Seven. Or, if this cannot be done, that the attaching creditors be directed to bring into court any moneys realized from said land, and that the same be treated as assets passing by said deed of assignment, and distributed among the creditors as therein directed.

8 Eight. For a reference then to the auditor for proof of claims and for the taking and stating on account with the assignee, Browning.

Nine. And for such other and further relief as to the court may seem right and proper.

GEORGETTE A. CHAMBERLIN,
By F. T. CHAMBERLIN.
FRANK T. CHAMBERLIN.
HENRY M. DEXTER.
KELLEY & CHAMBERLIN.
LANSBURGH & BRO.
THE CAPITAL TRUST COMPANY,
By O. B. HALLAM, *Solicitor.*
WASH. B. WILLIAMS.
WILLIAM GALT.

O. B. HALLAM,
Solicitor for Plaintiffs.

DISTRICT OF COLUMBIA, *ss:*

I do solemnly swear that I have read the foregoing bill by me subscribed and know the contents thereof; that the facts therein stated of my personal knowledge are true, and those stated upon information and belief I believe to be true.

HENRY M. DEXTER.

Subscribed and sworn to before me this — day of August, A. D. 1898.

J. R. YOUNG, *Clerk,*
By R. J. MEIGS, JR., *Ass't Clk.*

Memorandum.

Aug. 25, '98.—Restraining order granted, returnable August 29.

Motion of T. T. Keane, &c.

Filed August 26, 1898.

In the Supreme Court of the District of Columbia.

GEORGETTE A. CHAMBERLIN ET AL., Plaintiffs,
v.
HORATIO BROWNING ET AL., Defendants. } In Equity. No. 19686.

Now comes the defendant Thomas T. Keane, by Arthur A. Birney and Arthur Peter, his solicitors, and moves the court to set aside, revoke, and annul, so far as he is concerned, the restraining order heretofore, on the 25th day of August, 1898, granted in this cause.

ARTHUR A. BIRNEY.
ARTHUR PETER,
Solicitors for Def't Keane.

9 CITY OF WASHINGTON, } *To wit:*
District of Columbia, }

I, Thomas T. Keane, on oath say that I am the defendant named in the above-entitled cause; that the allegation of the bill of complaint that the said Keane elected to accept the provisions of *of* said deed of assignment *are* wholly untrue and without foundation; that I attended no meeting of the creditors except the first; I then and there refused to accept the assignment or to be bound by it in any way, and have ever since maintained the same position, and I never accepted nor received any dividend from the assignees, and I further say the said proposed sale is to be made upon a writ of *fi. fa.* issued upon a judgment of mine against said Scott, and the other defendants are in nowise interested therein or responsible therefor, save as the- may be possessed of judgments subsequent to mine against said Scott. In said suit and in the issuance of the *fi. fa.* therein I have acted, upon the advice of counsel, independently of any other creditor.

THOS. T. KEANE.

Subscribed and sworn to this 26th day of August, 1898.

J. R. YOUNG, *Clerk,*
By R. J. MEIGS, JR.

Order Discharging Restraining Order as to Thomas T. Keane.

Filed August 26, 1898.

In the Supreme Court of the District of Columbia.

GEORGETTE A. CHAMBERLIN }
vs. } No. 19686.
HORATIO BROWNING ET AL. }

Upon motion of the defendant Thomas T. Keane, and after argument by counsel for the complainants and for the said Keane, it is this 26th day of August, 1898, ordered that the restraining order heretofore passed in this cause be, and the same is, modified so that it shall not interfere with the right of the defendant Thomas T. Keane to allow or cause the sale advertised under his writ of *fieri facias* to proceed.

By the court:

A. C. BRADLEY, *Justice.*

10 *Affidavits of H. K. Simpson and F. T. Chamberlin.*

Filed August 27, 1898.

In the Supreme Court of the District of Columbia.

GEORGETTE A. CHAMBERLIN ET AL., Plaintiffs, *vs.* HORATIO BROWNING ET AL., Defendants.	In Equity. No. 19686, Dock. 45.

The affiant, Henry K. Simpson, says that he is a resident of the District of Columbia, and that on the 5th day of May, 1896, he was secretary of the People's Fire Insurance Co. and secretary of the Capital Trust Co., both of which companies were creditors of John B. Scott, who had shortly before—that is to say, on or about April 24, 1896—made an assignment to Horatio Browning for the benefit of his creditors; that on said May 5 the affiant attended a meeting of said Scott's creditors, called by said assignee, at the National hotel, in the city of Washington, when said assignee called the meeting to order and presented a schedule of the assets and liabilities, showing assets amounting to $31,017.54 and liabilities amounting to $85,848.52; among the assets was listed 'life interest in county property, $200;' that the meeting then organized by electing James W. Somerville chairman and the affiant as secretary, and, after discussion, it was resolved that a committee of five, consisting of F. T. Chamberlin, T. D. Daly, A. W. Kelley, Wm. A. Butler, and T. T. Keane, be appointed to confer with Mr. Browning, the assignee, to consider a time for the sale of the properties; that on the next day, May 5, 1896, the said committee of five met at said hotel, all the members present, and organized by electing Dr. Chamberlin president and the affiant as secretary, and passed resolution requesting certain information from the assignee as to the running of the hotels and certain action on his part in relation to the management; that afterwards, on May 8, said committee met again, all the members present, and resolved to call another general meeting of the creditors on May 13, and to recommend removal of the assignee and appointment of a receiver; that the creditors met pursuant to such call, and the committee of five made to the meeting that recommendation, and Mr. Daly moved that legal steps be taken to appoint a receiver, and on a call of the list of creditors, $34,806.34 in amount voted in the affirmative and $17,923.41 in the negative. Among those voting in the affirmative were Messrs. T. T. Keane, T. D. Daly, and E. O. Whitford & Co., and among those voting in the negative were Mess. Browning & Middleton, and H. Browning, but, as affiant is informed and believes, no steps were subsequently taken to carry out the motion so adopted, nor was any subsequent meeting of the creditors held.

The affiant kept no official record of the proceedings of the creditors' meetings or of the committee of five, but did keep rough

minutes thereof, which were read and approved at each
11 meeting of the creditors and committee, and are now in affiant's possession, and it is from his recollection, as refreshed from an examination of these notes or minutes, that he now principally speaks in this affidavit.

HENRY K. SIMPSON.

Subscribed and sworn to before me this 27th day of August, 1898.

JOHN H. O'DONNELL,
[SEAL.] *Notary Public, D. C.*

The affiant, Frank T. Chamberlin, says that he has read the foregoing affidavit of Henry K. Simpson, and that he knows that the statements therein are true; that affiant was the chairman of the committee of five referred to in said affidavit, and that Mess. T. T. Keane and T. D. Daly were present at the two meetings of the committee and the two meetings of creditors and participated therein and voted in favor of the action taken, and that the legal steps to appoint a receiver were not taken, only because of the difficulty in getting together again the creditors voting in favor of same.

FRANK T. CHAMBERLIN.

Subscribed and sworn to before me the above date.

[SEAL.] SAMUEL H. WALKER,
Notary Public.

Memorandum.

Sept. 24.—Demurrer to bill of Central national bank filed.
" 26.—Demurrers of defendants Horatio Browning, Alpheus Middleton, and Edward O. Whitford filed.

Demurrer of Defendant Thomas T. Keane.

Filed September 28, 1896.

In the Supreme Court of the District of Columbia.

GEORGETTE A. CHAMBERLIN, Complainant,
vs.
HORATIO BROWNING ET AL., Defendants. } Equity. No. 19686.

Now comes the defendant Thomas T. Keane, and, by protestation, not confessing any of the matters alleged in the bill of complaint to be true as charged, demurs to the said bill and says that he ought not to be required to answer the same, because he says that the said complainants have not in and by their said bill stated such a case as entitles them to any relief in a court of equity, in that—

1st. The said bill is multifarious.

2d. Complainants show no such interest in the property involved as entitled them to file this bill and seek the relief prayed.

12 3d. Because the court is without jurisdiction to proceed as prayed.

4th. Because of the complainants' laches apparent upon the face of said bill.

5th. For numerous other reasons apparent upon the face of said bill.

Wherefore the defendant prays that the said bill may be dismissed, and that he may have judgment for his costs.

A. A. BIRNEY,
Solicitor for Defendant Thomas T. Keane.

DISTRICT OF COLUMBIA, *ss:*

I, Thomas T. Keane, defendant in the above-entitled cause, depose and say that the foregoing demurrer is not interposed for purposes of delay.

THOMAS T. KEANE.

Subscribed and sworn to before me this 28th day of September, 1898.

GEO. W. DREW,
[SEAL.] *Notary Public, D. C.*

I, Arthur A. Birney, counsel for defendant Thomas T. Keane, do hereby certify that in my opinion the foregoing demurrer is well founded in point of law.

A. A. BIRNEY.

EXHIBIT No. 1 TO PLAINTIFFS' BILL.

Filed October 19, 1898.

Liber 2125, folio 41 *et seq.*

Fee, $4.75.

John B. Scott to Horatio Browning. } Recorded Apr. 25th, 1896, 11.10 a. m. Assignment. (4.)

This indenture made this 24th day of April 1896, by and between John B. Scott of the city of Washington, District of Columbia, party of the first part, and Horatio Browning of the same place, party of the second part; whereas, the party of the first part is indebted unto divers persons in sundry sums which he is unable to pay in full, and is desirous of providing for the payment of the same, so far as in his power; and whereas, said indebtedness consists of two classes, viz: of the late firm of Crosby, Burton & Co. proprietors of the National hotel, consisting of Walter Burton, William H. Crosby and said John B. Scott, and the individual indebtedness of said grantor, now therefore this indenture witnesseth, that said party of the first —, for and in consideration of the premises, and of the sum
13 of one dollar to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, hath granted, bargained and sold, conveyed, assigned, transferred, and

set over, and by these presents doth grant, bargain, and sell, convey, assign, transfer and set over unto the said party of the second part, his heirs, executors, administrators and assigns all and singular the real estate, goods, chattels, merchandize, effects, stocks, promissory notes, debts, claims, demands and property of him the said party of the first part, (except all legal exemptions, which are hereby reserved by said party of the first part), the same being fully described in Schedule "A" hereto annexed, to have and to hold the same above-mentioned property set out and described in said Schedule "A" hereto annexed, unto the said party of the second part, his heirs, executors, administrators, and assigns: In trust, however, and to the uses and intents and purposes, following, that is to say, that the said party of the second part shall take immediate poss-ion of the said property and with all reasonable diligence sell and dispose of the said property and effects and convert the same into money, and also to collect all debts and demands hereby assigned, as may be collectible, and with and out of the proceeds of such sales and collections, to pay: First, all just and reasonable expenses, costs, and charges of executing this assignment and of carrying out and into effect the trust hereby created, together with a reasonable commission, to the party of the second part for his services; second, to pay and discharge in full, if the residue of said proceeds are sufficient for that purpose, all debts and liabilities now due or to become due from the said party of the first part, with all interest money due or to become due from the said party of the first part thereon; and if the residue of said proceeds shall not be sufficient to pay the said debts and liabilities, and interest money in full, then to apply the said residue of said proceeds to the payment of the said debts and liabilities, *notably* in proportion, a full list of which debts and liabilities and the amount thereof, and the residence of those to whom they are due is contained in Schedule "B" hereto annexed; third, and if, after the payment of all the said debts and liabilities, in full, there be any remainder or residue of said proceeds, to repay and return the same to the said party of the first part, his executors, administrators, or assigns. And in furtherance of the premises that the said party of the first part doth hereby make and constitute the said party of the second part, his true and lawful attorney, giving and granting to the said party of the second part full power and authority to do and perform all and every act word thing whatsoever requisite and necessary to be done in and about the premises, as fully to all intents and purposes as said party of the first part might or could do and with the full power and authority to do all acts and things which may be necessary in the premises to the full execution of the trust hereby created, and to ask, demand, recover, and receive of, and from all and every person or persons, all property, debts and demands, due and owing and belonging to the said party of the first part, and
14 to sue, prosecute, defend and implead for the same. The said party of the second part doth hereby accept the trust created and reposed in him by this instrument, and covenants and agrees to and with the said party of the first part that he will

faithfully and without delay execute the trust created according to the best of his skill, knowledge and ability:

In witness whereof, the said parties to these presents have hereunto set their hands and seals, the day and year first hereinbefore written.

JNO. B. SCOTT. [SEAL.]
H. BROWNING. [SEAL.]

Witness:
AUGUSTUS P. SCHELL.

Inventory of the Estate, Real and Personal, of said John B. Scott, Assignor.

SCHEDULE "A."

Real Estate.

House and premises No. 943 O street northwest, in the city of Washington, District of Columbia, subject to deed of trust to secure note for $8,000 and interest; house and premises No. 1523 8th street northwest, in said city, subject to deed of trust to secure note for $4,500 and interest; estate for life of said party of the first part in twenty-five acres of land in Montgomery county, State of Maryland, particularly described in deed recorded in Liber J. A. No. 11, folio 241 *et seq.*, of the land records of said county.

JNO. B. SCOTT.

SCHEDULE "A" (Continued).

Personal Estate.

Household furniture, fixtures, and personal effects in the National hotel, in the city of Washington, D. C., valued at	$90,000
Merchandize in store-room	750
Fuel	100
Due from boarders	2,619
Due from transient guests	1,000
Bill receivable	409.90
Due from trade ac	373
Cash on hand	100

Household furniture, fixtures, and effects in Howard house, Washington, D. C., valued at $3,500, subject to chattel deed of trust for same amount.

JNO. B. SCOTT.

15 SCHEDULE "B."

Liabilities.

Bills payable.

Geo. Little, demand					$1,000	Washington, D. C.
" "					300	Do.
F. Tenney, 3 yrs.					6,765.34	Do.
F. Tenney, Mrs. Stewart	Due	18	21	May	2,000	Do.
F. Tenney, Lanaher & Son	"	13	16	June	3,000	Do.
John T. Kelley	"	2	5	May	300	Washington.
Browning & Middleton	"	22	25	Ap'l.	201.13	Do.
" " "	"	24	27	"	210.65	"
F. Tenney	"	'97, '98, '99			7,795.64	"
Beal & Baker	"	27	30	Ap'l.	106	"
Cathwood	"	27	30	"	160	Phila.
Davis, Water & Co.	"	30	2	June	112.08	
Mayfield & Heisler	"	24	27	Ap'l.	150	Geo'town, D. C.
Lansburgh & Bro.	"	30	2	May	475	Wash., D. C.
Thos. Somerville	"	30	2	"	116.89	Do.
Dexter & Co.	"	3	6	May	300	"
Kelly & Chamberlin	"	5	8	"	396.93	"
Wilson & Rogers	"	12	15	"	183.96	"
Wm. Galt	"	15	18	"	1,000	"
Wash. B. Williams	"	19	22	"	308.44	"
Mayfield & Hieston	"	19	22	"	400	Geo'town, D. C.
Browning & Middleton	"	21	24	"	295.80	Wash.
Browning & Middleton	"	24	27	"	295.80	"
" " "	"	25	28	"	295.82	"
Edward Heald	"	21	24	Ap'l.	150	Do.
James E. Clark	"	21	24	May	700	"
Browning & Middleton	"	25	28	"	193.32	"
F. T. Chamberlin, W. B.	"	26	29	"	250	"
T. D. Daly	"	27	30	Ap'l.	200	"
W. H. Crosby	Due	29	2	May	350	Wash.
Kelley & Chamberlin		4	7	June	421.50	"
Independent Ice Co.		4	7	June	266	"
M. F. Brennan		5	8	June	224.87	"
F. Tenney (Lanahan)		28	31	May	1,300	"
J. G. Slater		5	8	May	500	"
Ed. Sweeney		6	9	M'ch, '97	1,500	"
F. Tenney		6	9	July	650	"
Mayfield & Heiston		10	13	June	408.85	Geo'town, D. C.
" " "		12	15	"	400	
Ind. Ice Co.		13	16	"	300	Wash.
R. M. Jones & Co.		17	20	"	202.85	Do.
T. T. Keane		17	20	"	242.36	Wash., D. C.
Wilson & Rogers	"	16	19	"	202.61	"
R. H. Marshall	"	19	22	May	700	"
C. E. Hoover	"	19	22	June	300	"
Browning & Middleton	"	18	21	"	500	"
W. Burton	"	23	26	"	2,500	"
Browning & Middleton		26	29	Apr.	571.93	"
J. B. Scott	"	23	26	June	2,500	"
Green & Brennan	"	21	24	Apr.	316.81	"
J. B. Scott	"	23	26	June	900	Wash., D. C.
Ed. Sweeney	"	23	26	July	488.75	"
Browning & Middleton	"	27	30	"	285.96	"
Ed. Head	"	26	29	May	400	"
R. Callahan	"	26	29	June	800	"
E. O. Whitford & Co.	"	25	28	Ap'l.	123.85	"
Mayfield & Heaston	"	26	29	June	200	Geo'town, D. C.
F. Tenney	"	27	30	June	2,000	W. city, D. C.
Browning & Middleton	"	30	3	"	800	Do.
C. E. Hoover	"	30	2	May	200	Do.

16	Browning & Middleton.	Due	1/3	July		466.90	W. city, D. C.
	" " "	"	"	"		200	"
	Kelley & Chamberlin	"	1/4	July		268.65	"
	M. F. Brennan	"	1/4	June		154.46	"
	A. Mann	"	7/10	May		100	"
	Wilson & Rogers	"	8/10	July		158.19	"
	W. H. Butler	"	9/12	July		259.33	"
	Deiter & Co.	"	9/12	July		104.82	"
	" " "	"	8/11	June		100	
	J. F. Kelley	"	5/8	"		250	"
	T. W. Smith	"	9/12	July		83.92	"
	Mayfield & Hastings	"	10/13	"		150	Geo'town, D. C.
	T. E. Kann	"	10/13	June		849.64	Washington, D. C.
	W. B. Moses	"	11/14	"		380	"
	" " "	"	11/14	July		376.71	"
	E. O. Whitford	"	11/14	May		251.81	Do.
	E. Greenapple	"	13/16	June		365.30	W. city, D. C.
	W. H. Crosby	"	28/1	Apr.		300	Wash. city, D. C.
	Lansburgh & Bro.		13/16	July		200.00	Do.
	Lanahan & Son		16/19	May		256.00	Balto., Md.
	F. D. Daly		15/18	July		600.00	W. city, D. C.
	Ind. Ice Co.		16/19	"		350.00	"
	F. Tenney		16/19	"		500.00	"
	" "		16/19	"		1,100.00	"
	T. Summerville		17/20	June		81.47	"
	N. W. Beverage		17/30	"		129.63	"
	J. L. Barbour & S.		20/23	July		400.00	"
	Dexter & Co		20/23	"		600.00	"
	W. B. Williams		20/23	"		450.00	"
	Mayfield & Heiston		20/23	"		275.00	Geo'town, D. C.
	J. E. Clark	Due	20/23	July		450.00	W. city, D. C.
	Robinson, Chery & Co.		20/23	June		100.00	Do.
	M. F. Brennan		20/23	July		200.00	"
	Browning & Middleton		21/24	"		250.00	"
	Mayfield & Heiston		21/24	"		500.00	"
	" " "		22/25	"		175.00	"
	Wilson & Rogers		23/26	Jan.		100.00	"
	Browning & Middleton		23/26	July		270.00	"
	Mrs. H. Stewart		24/27	June		1,300.00	Do.
	H. P. Moore					1,500.00	"
						61,825.97	

JNO. B. SCOTT.

Acc'ts payable.

Kelly & Chamberlin	322.46	Washington, D. C.
Wilson & Rogers	110.73	Do.
T. T. Keldue	669.56	Do.
E. Greenapple	673.56	Do.
E. O. Whitford & Co.	140.04	Do.
W. T. Brender	52.34	Do.
R. W. Jones & Co.	28.34	Baltimore.
C. D. Kenney	15.00	Washington, D. C.
M. W. Beaveradge	11.50	Washington, D. C.
R. B. Earnshaw	4	Do.
W. G. Orr & Co.	.58	Do.
Ind'p't Ice Co.	113.13	Do.
Browning & Middleton	869.39	Do.
Holland Steamboat Co.	133.01	New York.
Albert Moses	24.50	Washington, D. C.
Dexter Laundry Co.	73.74	Do.
Manfield — Haeston	248.35	Georgetown, D. C.
J. L. Barbour & Son	49.50	Washington, D. C.
Woodward — Lothr	347.95	Do.
Md. Leth. Groff Co.	262.58	Balto., Md.
D. T. Bizby & Co.	38.10	Balto., Md.

17	Beente Slaon'r	31.00	W. city, D. C.
	H. R. *Barlerr*	15.04	Lives, Del.
	Washington Post	15.00	Washington.
	Boston *Commi*	60.00	Boston, Mass.
	Encaster May Co	42.00	Cohoes, N. Y.
	Dranell & *Memor*	24.00	New York.
	Norris Peters & Co	75.00	Washington, D. C.
		4,350.80	
	Hon. Blair	33.33	Washington, D. C.
	Miller — Rolla	84.33	Do.
	Johnson & Moses	18.00	Do.
	W. Market Co	50.36	Wash., 1860-'2.
	Rent due Nat. Hotel Co	6,378.42	Washington.
		10,945.24	

APRIL 23, 1896.

Accounts and Bills Payable by the Howard House.

Mrs. F. Greenapple, Washington		816.11
J. L. Barbour & Son,	do.	86.20
Whiteford & Co.,	do.	202.35
W. S. Monge & Bro.,	do.	85.20
Miller & Rolla,	do.	110.25
Broad River Car Co., Virginia		10.40
Wilkins & Co., Washington		37.05
Phillip Lang, Balt., Md		50.00
Omeldorf & Taxon, Washington		40.70
Md. Lithography Co., Balt., Md		12.75
Cacrophito Co., New York		21.25
Montecello wine, Virginia		9.67
Ad. in Bethel Cadet, "		5.00
F. Libley & Co., Washington		5.00
Was. Inolin Co., New York		17.05
Market Co., Washington, D. C		33.90
F. I. Hunt, Pennsylvania		50.00
Geo. S. Seage, Washington, D. C		31.50
W. G. Orr,	Washington, D. C	3.55
U. S. Elec. Light Co.,	city, D. C	9.20
Boston Courier, Bost., Mass		20.00
W. A. Marean, Washington, D. C.,		22.00
Mrs. F. Greenapple		154.23
Secured in part by chattel mortgage.	H. Browning	2,950.00
	Browning & Middleton	800.00

JNO. B. SCOTT.

DISTRICT OF COLUMBIA, *To wit:*

I, John B. Scott, do swear that I am the party grantor in the foregoing indenture, and that the above inventory of my real and personal estate is correct according to the best of my knowledge; and, further, that the foregoing list of my creditors, their respective residences and places of business, and the amount of their respective demands is also correct according to the best of my knowledge; and it is my intention that, should there be others whom I have overlooked, they shall be included in the benefit of this assignment, and that any errors in amounts specified should be corrected.

JNO. B. SCOTT.

18 Subscribed and sworn to before me this 24th day of April, A. D. 1896.

AUGUSTUS P. SCHELL,
[NOTARIAL SEAL.] *Notary Public.*

DISTRICT OF COLUMBIA, *ss:*

I, Augustus P. Schell, a notary public in and for the District aforesaid, do hereby certify that John B. Scott and Horatio Browning, parties to a certain deed bearing date on the 24th day of April, A. D. 1896, and hereto annexed, personally appeared before me, in the District aforesaid, they being personally well known to me to be the persons who executed said deed, and acknowledged the same to be their act and deed.

Given under my hand and notarial seal this 24th day of April, A. D. 1896.

AUGUSTUS P. SCHELL,
[NOTARIAL SEAL.] *Notary Public.*

Endorsed.

This is to certify that the foregoing is a true and verified copy of an instrument as recorded in Liber No. 2125, fol. 41 *et seq.*, one of the land records of the District of Columbia.

Office of the recorder of deeds, Washington, D. C., August 25, 1898.

[STAMP.] GEO. F. SCHAYER,
Dep. Recorder of Deeds.

Decree Overruling Demurrer, &c.

Filed November 1, 1898.

In the Supreme Court of the District of Columbia.

GEORGETTE A. CHAMBERLIN ET AL., Plaintiffs,
vs.
HORATIO BROWNING ET AL., Defendants. } Equity. No. 19686.

This cause coming on to be heard on the demurrers of the defendants Browning, Middleton, Keane, The Central National Bank, and Whitford, and having been argued by counsel, and the court being sufficiently advised—

It is, this 1st day of November, 1898, adjudged, ordered, and decreed that said demurrers be, and they are each and all overruled, and that said defendants have leave to answer within twenty days.

It is further ordered that the temporary injunction heretofore granted, as prayed in the bill and as modified by the subsequent order of August 26, be continued in force until the final hearing.

A. B. HAGNER,
Asso. Justice.

19

Order for Appeal.

Filed November 10, 1898.

Court of Appeals of the District of Columbia.

No. —, Original, October Term, 1898.

THOMAS T. KEANE, CENTRAL NATIONAL Bank of Washington, Horatio Browning, Alpheus Middleton, Edward D. Whitford, Petitioners, *vs.* GEORGETTE A. CHAMBERLIN ET AL.	In Equity. No. 19686.

On consideration of the petition for the allowance of an appeal in this cause from an order of the supreme court of the District of Columbia passed in this cause on the 1st day of November, A. D. 1898, continuing the injunction during the pendency of said cause, it is now here ordered by the court that this appeal be, and the same is hereby, allowed.

Per MR. CHIEF JUSTICE ALVEY.

November 8, 1898.

A true copy.
Test:
[SEAL.] ROBERT WILLETT, *Clerk.*

Endorsed.

The clerk will prepare transcript of record for Court of Appeals, giving copies of original bill and its exhibits, demurrer of defendant Thos. T. Keane, orders granting restraining order, modifying same, and order continuing same, with mem. of dates of demurrers filed by other def'ts.

A. A. BIRNEY,
Of Counsel for Appellees.

Order for Citation.

Filed November 11, 1893.

In the Supreme Court of the District of Columbia, the 11th Day of November, 1898.

GEORGE A. CHAMBERLIN ET AL. *vs.* THOMAS T. KEANE ET AL.	At Law. No. 19686.

The clerk of said court will issue citation on the appeal of Thomas T. Keane, Horatio Browning & Alpheus Middleton, Central
20 National Bank, & Edward O. Whitford, to all the complainants named in the bill.

A. A. BIRNEY AND
ARTHUR PETER,
Of Counsel for Appellants.

In the Supreme Court of the District of Columbia.

GEORGETTE A. CHAMBERLIN, FRANK T. CHAMBERLIN, The Capital Trust Company, Wash. B. Williams, Henry M. Dexter, Gustave Lansburgh and James Lansburgh, the Last Two Trading as Lansburgh & Bro; Andrew W. Kelley and Edward H. Chamberlin, Trading as Kelley and Chamberlin, and William Galt, Pl'ffs,	No. 19686. In Equity.
vs.	
HORATIO BROWNING, JOHN B. SCOTT, ALPHEUS Middleton, Thomas T. Keane, The Central National Bank of Washington, Edward O. Whitford, and Timothy D. Daly, Defendants.	

The President of the United States to Georgette A. Chamberlin, Frank T. Chamberlin, The Capital Trust Company, Wash. B. Williams, Henry M. Dexter, Gustave Lansburgh and James Lansburgh, the last two trading as Lansburgh & Bro.; Andrew W. Kelley and Edward H. Chamberlin, trading as Kelley and Chamberlin, and William Galt, Greeting:

You are hereby cited and admonished to be and appear at a Court of Appeals of the District of Columbia, upon the docketing the cause therein under and as directed by the rules of said court, pursuant to an appeal allowed by the Court of Appeals of the District of Columbia on the 8th day of November, 1898, wherein Thomas T. Keane, Horatio Browning, Alpheus Middleton, The Central National Bank of Washington, and Edward O. Whitford are appellants and you are appellees, to show cause, if any there be, why the decree rendered against the said appellants should not be corrected and why speedy justice should not be done to the parties in that behalf.

Seal Supreme Court of the District of Columbia.

Witness the Honorable Edward F. Bingham, chief justice of the supreme court of the District of Columbia, this 8th day of November, in the year of our Lord one thousand eight hundred and ninety-eight.

JOHN R. YOUNG, *Clerk.*

Service of the above citation accepted this 18th day of November, 1898.

O. B. HALLAM,
Attorney for Appellees.

21 *Memorandum.*

November 18, 1898.—Appeal bond filed.

Supreme Court of the District of Columbia

UNITED STATES OF AMERICA, *District of Columbia*, } *ss*:

I, John R. Young, clerk of the supreme court of the District of Columbia, do hereby certify that the foregoing pages, numbered from 1 to 37, inclusive, are true copies of originals in cause No. 19686, in equity, wherein Georgette A. Chamberlin *et al.* are complainants and Horatio Browning *et al.* are defendants, as the same remains upon the files and of records of said court.

Seal Supreme Court of the District of Columbia.

In testimony whereof I hereunto subscribe my name and affix the seal of said court, at the city of Washington, in said District, this 19th day of November, A. D. 1898.

JOHN R. YOUNG, *Clerk*.

[Ten-cent U. S. internal-revenue stamp, canceled 1898. J. R. Y.]

Endorsed on cover: District of Columbia supreme court. No. 860. Thomas T. Keane *et al.*, appellants, *vs.* Georgette A. Chamberlin *et al.* Court of Appeals, District of Columbia. Filed Nov. 21, 1898. Robert Willett, clerk.

22 THURSDAY, *December 8th, A. D.* 1898.

THOMAS T. KEANE, HORATIO BROWNING, ALPHEUS MIDDLETON, The Central National Bank of Washington, and Edward O. Whitford, Appellants,
vs.
GEORGETTE A. CHAMBERLIN, FRANK T. CHAMBERLIN, The Capital Trust Company, Wash. B. Williams, Henry M. Dexter, Gustave Lansburgh and James Lansburgh, the Last Two Trading as Lansburgh & Bro.; Andrew W. Kelley and Edward H. Chamberlin, Trading as Kelley and Chamberlin, and William Galt. } No. 860.

The argument in the above-entitled cause was commenced by Mr. Arthur Peter, attorney for the appellants.

FRIDAY, *December 9th, A. D.* 1898.

THOMAS T. KEANE, HORATIO BROWNING, ALPHEUS MIDDLETON, The Central National Bank of Washington, and Edward O. Whitford, Appellants,
vs.
GEORGETTE A. CHAMBERLIN, FRANK T. CHAMBERLIN, The Capital Trust Company, Wash. B. Williams, Henry M. Dexter, Gustave Lansburgh and James Lansburgh, the Last Two Trading as Lansburgh & Bro.; Andrew W. Kelley and Edward H. Chamberlin, Trading as Kelley and Chamberlin, and William Galt. } No. 860.

The argument in the above-entitled cause was continued by Mr. Arthur Peter, attorney for the appellants, and by Mr. O. B. Hallam,

attorney for the appellees, and was concluded by Mr. A. A. Birney, attorney for the appellants.

23 THOMAS T. KEANE ET AL., Appellants, vs. GEORGETTE A. CHAMBERLIN ET AL. } No. 860.

Opinion.

Mr. Justice SHEPHARD delivered the opinion of the court:

The appeal in this case is from an order overruling a demurrer to the appellees' bill, and was allowed November 8, 1898, upon the special grounds set forth in the petition therefor.

The bill alleges that all the parties, complainants and defendants, are citizens of the United States and residents of the District of Columbia.

The substantial facts alleged in the bill are these:

On April 24, 1896, defendant Scott, then engaged in business in said District, made an assignment for the benefit of his creditors to defendant, Horatio Browning, assignee. Said Browning was then a partner with one Middleton, who is also a defendant, under the name of Browning & Middleton.

The said deed of assignment conveyed to said Browning, assignee,

24 "all and singular the real estate, goods, chattels, merchandise, effects, stocks, promissory notes, debts, claims, demands, and property" of the said Scott, excepting legal exemptions and declared the same to be fully described in Schedule A thereto annexed.

Schedule A gives a list of certain property not necessary to be mentioned here, and contains the following recital: "Estate for life of said party of the first part in twenty-five acres of land in Montgomery county, State of Maryland, particularly described in deed recorded in Liber J. A., No. 11, folio 241 *et seq.* of the land records of said county."

The deed referred to was made by John D. Coughlan to said Scott. Scott was the owner in fee-simple of said land and on October 17, 1888, conveyed it to Coughlan. Coughlan on the next day reconveyed the same to Scott, his heirs and assigns to the use of Scott, his heirs and assigns, upon the following trusts:

"In trust for the said John B. Scott during his life to retain possession of said parcel of land and premises, without impeachment for waste, and receive the rents, issues and profits thereof for his own use and benefit, and from and after his death to hold said parcel of land and premises unless the same shall be disposed of as hereinafter authorized for the use and benefit of Mary Elizabeth Scott and Margaret Adelia Scott, daughters of said John B. Scott, their heirs and assigns forever, as tenants in common; and upon this further trust, that said John B. Scott shall have full power and authority to lease or sell said parcel of land or any part thereof from time to time and convey the same in fee-simple absolute or by way of mortgage, deed of trust or otherwise, and upon such terms and

for such conditions as said John B. Scott may deem fit, and without obligation on the part of the purchaser to see to the application of the purchase-money or the person lending money to see to the application thereof, and to devise and to dispose of said parcel of land and premises by last will and testament executed according to law."

The deed of assignment was regularly executed by Scott and Browning as assignee, and each and all of the defendants had actual and constructive notice of the same, and elected to accept its provisions by attending creditors' meetings called by the assignee. All of the defendants, as well as the complainants, were creditors of said Scott. The instrument was recorded by the assignee in the District of Columbia, May 10, 1896, and in Montgomery county, Maryland, on June 3, 1896.

Before the record in Montgomery county, one of defendants, Thomas T. Keane, filed actions of debt in the circuit court of said county against Scott and sued out attachments that were levied upon the said land.

After the date of the record the other defendants, including Browning and Middleton, brought their separate actions of debt in the circuit court of Montgomery county, Maryland, against Scott, and caused attachments to be levied on said land also.

Keane obtained judgments of condemnation on November 11, 1896, which were followed in March, 1897, by similar judgments in favor of the other attaching creditors aforesaid.

The assignee, Browning, filed another suit in his own name in December, 1897, with an attachment in which judgment of condemnation was entered January 17, 1898.

On December 22, 1896, Keane, upon his judgments aforesaid, filed a bill in equity in the circuit court of Montgomery county, Maryland, against said Scott, and his daughters, Mary Elizabeth and Margaret Adelia Scott, and said John D. Coughlan to set aside said conveyances on the ground that they had been made without consideration and for the purpose of hindering, delaying and defrauding creditors, and so forth.

A decree was passed in said suit July 16, 1897, annulling the said deeds in so far as they might affect the rights and claims of said Keane as creditor, and this decree was affirmed by the court of appeals of Maryland on June 28, 1898.

On July 23, 1898, Keane filed the mandate of the court of appeals and procured a writ of *fieri facias* to issue to the sheriff of said county upon his judgment of condemnation. The sheriff has advertised the land, which is worth about $15,000, for sale on August 27, 1898, which if proceeded with will cause the sacrifice thereof for an inadequate price. It is also alleged:

"That it was the intention of said Scott, well known to said Browning, to convey, as he states in his deed of assignment, all his property except legal exceptions, and the use of the term 'estate for life' in reference to the Maryland land was an attempt to describe all the interest which he had therein, and had he known that the courts would hold that the deed under which he held was constructively fraudulent in its limitations and vested in him the fee-

simple he would have so listed it in his schedule. The proper construction that should be given the granting clause and schedule together is that all title which said Scott had in said land passed by the deed of assignment, and in any event, as plaintiffs are advised, believe, and therefore allege, the grantor being a resident of the District of Columbia and the deed of assignment having been made in said District, it vested in the assignee all property of said Scott, wherever situated, irrespective of the schedule, at least so far as concerns citizens or residents of said District; that it was the duty of said assignee to at once take possession of said Maryland farm, as well as all other property, which he failed and neglected to do, but instead thereof attempted and undertook, as hereinafter stated, to ignore said deed of assignment so far as related to said farm and to convert same, in part at least, to his own use."

Other allegations of acts of Browning, inconsistent with his duty and obligation as trustee, are also made, and the prayers for relief, omitting the first as merely formal, are:

"Two. That the defendant Browning be rerequired with his answer to exhibit an account of the assets that came to his hands and of the manner in which he has disposed of same.

Three. That the defendant Scott in his answer disclose the location and character of any property not mentioned in the schedule, but owned by him at date of the assignment.

Four. That said Browning be removed as assignee and a trustee appointed in his stead to execute said trust, and said Browning required to turn over to him any balance or assets in his hands.

25 Five. That said Scott be required, if need be, to execute to said new trustee a deed more specifically conveying the fee-simple title to said Maryland land.

Six. That the attaching creditors be restrained, pending this action, from in any manner proceeding to enforce their said attachments on judgments of condemnation against said Maryland land, and from doing any act or thing to hinder, delay, or interfere with the control or management of the estate abroad for the equal benefit of all said Scott's creditors, and from in any way seeking to secure to themselves any greater benefit or interest out of said estate and effects than shall represent their '*pro rata*' share under said assignment, and that on final hearing such injunction be made perpetual.

Seven. Or, if this cannot be done, that the attaching creditors be directed to bring into court any moneys realized from said land, and that the same be treated as assets passing by said deed of assignment, and distributed among the creditors as therein directed.

Eight. For a reference then to the auditor for proof of claims and for the taking and stating an account with the assignee, Browning.

Nine. And for such other and further relief as to the court may seem right and proper."

A restraining order was granted August 25, 1898, returnable on August 29.

This was modified on August 26, 1898, "so that it shall not inter-

fere with the right of the defendant, Thomas T. Keane, to allow or cause the sale advertised under the writ of *fieri facias* to proceed."

Defendants joined in a demurrer to the bill which was overruled on November 1, 1898, and the temporary injunction, granted and modified as aforesaid, was continued in force until the final hearing.

It was stated on the argument and accepted as a fact in the case, that the sale was made under execution as advertised, and that the land brought the sum of $8,500.

It appears, by inference from the omission of an allegation in the bill relating thereto, and by practical concession on the argument, that no bond was filed by the assignee in the State of Maryland as required by statute in the case of assignments for the benefit of creditors. Code of Maryland, art. 16, sec. 205.

1. The first contention of the appellants is, that the demurrer should have been sustained because the courts of the District of Columbia, being courts of the United States, have no jurisdiction, under any conditions whatsoever, to enjoin a party from proceeding in the courts of a State.

This is founded on the prohibition contained in section 720, R. S., which reads thus: "The writ of injunction shall not be granted in any court of the United States to stay proceedings in any court of any State, except in bankruptcy proceedings."

This statute, enacted originally in 1793, was intended to prevent unseemly conflicts that might occur between the courts of the several States, and the Federal courts exercising jurisdiction within their limits, and has always received liberal interpretation to that end. Diggs *v.* Wolcott, 4 Cranch, 179; Peck *v.* Jenness, 7 How., 612, 625; Watson *v.* Jones, 13 Wall., 679, 719; Haines *v.* Carpenter, 91 U. S., 254, 257; Dial *v.* Reynolds, 96 U. S., 348, 350; *In re* Sawyer, 124 U. S., 200, 220; see, also, Dillon *v.* K. C., etc., R'y Co., 43 Fed. Rep., 545.

As the courts of the District of Columbia are necessarily courts of the United States, they are included within the broad letter of the statute. U. S. *v.* Mills, 11 App. D. C., 500, 505.

In another sense also, the statute may be regarded as declaratory of an established principle of comity between courts, through the operation of which, when the jurisdiction of one court and the right of a party to prosecute his suit have attached, another court will not undertake to arrest the proceedings. Peck *v.* Jenness, 7 How., 624.

It must, however, be borne in mind, in considering the effect and operation, within the limits of the District of Columbia, of the general statutes relating to the courts of the United States, and some other subjects, that the courts of general jurisdiction of the District have, since the cession of its territory by the State of Maryland, been necessarily invested with the jurisdiction over persons and property therein that was formerly exercised by the courts of that State, and that is now in general exercised by the courts of the several States within their respective limits, in addition to such as were formerly exercised by the courts of the United States for the State of Maryland.

For the reason that the general laws of the United States did not, and could not provide for all the conditions existing at the time of the cession, and to prevent confusion, it was at once enacted that the laws of Maryland, not necessarily inconsistent with the change of sovereignty, should continue in force until modified or repealed by Congress; and notwithstanding the lapse of nearly one hundred years they now constitute the greater and more important part of our written law.

One effect of the peculiar conditions in respect of the jurisdiction over persons and property created by the cession of the District, was to raise doubts whether general acts of Congress, adapted to the conditions of the authority of the United States throughout the States and Territories of the Union generally, should be regarded as changing the laws of the District without the express declaration, or the necessary implication, of such a purpose; for it would sometimes happen that such a law, demanded by and enacted for conditions existing elsewhere, would tend to create confusion and embarrassment in the District because inconsistent with the great body of its law.

This, doubtless, led to the enactment now found in section 93, R. S. D. C., as follows: "The Constitution and all the laws of the United States, which are not locally inapplicable, shall have the same force and effect within the District as elsewhere within the United States." And this test we have had occasion several times to apply in determining whether a general law, in any or all of its provisions, was intended to have operation in the District of Columbia. Knight *v.* United States, 6 App. D. C., 1, 5; Chase *v.* United States, 7 App. D. C., 149, 156; United States *v.* Mills, 11 App. D. C., 500, 504, 506.

The original act now embodied in section 720, R. S., was enacted before the cession, and it may be that it is not locally appli-
26 cable for the reason that the apprehended conflicts of jurisdiction sought to be prevented thereby cannot occur in the District because its courts are undivided and represent but one authority. Courts of the United States, elsewhere, sit within the States, and their process runs to the limits of their designated districts which are sometimes coextensive with the limits of the State. Within those limits the party seeking redress may have it as well in the courts of one as of the other, and there is every reason why, upon general principles, he should be compelled to litigate in the State tribunal when it has already acquired jurisdiction of the subject-matter and of some at least of the parties. Moreover, the jurisdictional requirements of the United States courts in a State, in respect of diverse citizenship, would render it next to impossible for them to exercise a restraining power over the citizens of the States of their location in the matter of litigation in foreign States like that common in the State tribunals. It may be, therefore, that the section aforesaid ought not to be construed as operating to exclude the jurisdiction of the courts of the District in such cases, as the successors of the tribunals of the State of Maryland, or, in other words, as taking away a jurisdiction which, if the District were still a part

of the State of Maryland, would undoubtedly exist in the courts of that State. Dehon *v.* Foster, 4 Allen, 545; Cole *v.* Cunningham, 133 U. S., 107.

This question is one of importance and difficulty, and as the case can be fully and finally disposed of without its determination, we prefer to pass it until such time as it may come before us, of necessity, and receive re-examination and more careful consideration.

2. Passing the question, then, of the effect of the statute aforesaid upon the complainants' right to the relief prayed for, we come to the second ground of the contention in support of the demurrer, which, for convenience of consideration, will be separated into the several propositions that it involves.

(1.) It is entirely outside of the case to consider the operation of the provisions of the assignment act of Congress of February 24, 1893, in working a conveyance of the title of all property owned by the assignor Scott, whether recited inaccurately in the schedules attached to the deed of assignment, or omitted altogether therefrom.

The only property within the comprehension of this case is the land situated in Montgomery county, Maryland; and the act in force in the District of Columbia cannot affect the transmission of its title. The operation of the deed of assignment as a conveyance of its title must depend solely upon the laws of Maryland; for it is an unquestionable principle of law, here and everywhere, that the title and disposition of real property are exclusively subject to the laws of the State wherein it lies, which can alone prescribe the mode whereby the title can be passed from one person to another. McCormick *v.* Sullivant, 10 Wheat., 192, 202; United States *v.* Fox, 94 U. S., 315, 320; Robertson *v.* Pickrell, 109 U. S., 608, 611; Schley *v.* Pullman Car Co., 120 U. S., 575, 580; Langdon *v.* Sherwood, 124 U. S., 74, 81; Arndt *v.* Griggs, 134 U. S., 316, 321.

And, necessarily, the same rule that governs in the case of the transmission of title by deed or will applies also in the case of an assignment for the benefit of creditors. Loving *v.* Pairo, 10 Iowa, 282, 287; Gardner *v.* Commercial Bank, 95 Ill., 298, 304; Jenks *v.* Ludden, 34 Minn., 482, 486; Thompkins *v.* Adams, 41 Kan., 38, 48.

Cases cited on behalf of the appellees, and others likewise, go no further than to hold that, where an assignment for the benefit of creditors has been made in one State, it will pass the title to personal, and sometimes to real property in another when the deed of assignment, in its form and execution, is in substantial compliance with the laws of the latter State regulating conveyances of the title to such property, and conflicts only in some of its administrative features with the local law regulating the administration of such trusts for the benefit of creditors, when the question arises between the citizens of the State where the assignment was executed, and when the latter does not expressly contravene the laws and established public policy of the State where the property is situated. Juillard *v.* May, 130 Ill., 87, 96. See, also, Green *v.* Van Buskirk, 5 Wall., 307, 311, 312; Hervey *v.* R. I. Locomotive Works, 93 U. S., 664, 671; Cole *v.* Cunningham, 133 U. S., 107, 128.

(2.) Tested by the law of Maryland, the assignment, even if — be conceded that the assignor, Scott, had a greater than a life estate in the land, would pass nothing more than the latter as described in the schedule. Under the law prevailing in that State, the general words of the assignment are restricted by the particular description of the schedule which is made a part of it. Mims *v.* Armstrong, 31 Md., 87, 94.

Again, Scott having a life estate in the land coupled with a power of alienation of the fee by deed or will, his conveyance of the life estate, without reference to the power, passed that estate and nothing more. Ridgely *v.* Cross, 83 Md., 161. And that case is but the declaration of the rule of construction that generally prevails. 2 Perry on Trusts, sec. 511*c*; 4 Kent Comm. (12 ed.), 334, 335.

Under the foregoing decisions declaring the law of Maryland, all that could be treated as conveyed by the deed of assignment is the life estate of Scott as recited in the schedule. But it further appears, by operation of the law of Maryland, that no title of any nature whatsoever passed to the assignee because of his failure to enter into the bond required by the statute of the State in all cases of assignments for the benefit of creditors. Sec. 205, art. 16, of the Code of Maryland provides that every trustee to whom property shall have been conveyed for the benefit of creditors shall enter into and file a bond in the proper court, and declares that "no title shall pass to any trustee as aforesaid until such bond shall be filed and approved as aforesaid, and no sale made by any trustee without such bond shall be valid or pass any title to such party."

Under the construction given this statute, no title whatever passes either to personal or real property until the bond has been given; and a lien acquired by attaching creditors after the date of the assignment is not affected by the subsequent execution and approval of the bond. Barton *v.* Stieffel, 73 Md., 408, 410; Fidelity & Dep. Co. *v.* Haines, 78 Md., 454, 457; White *v.* Bank, 80 Md., 1, 5.

27 (3.) Even were the law of Maryland otherwise, and it were conceded also that an injunction would clearly lie to prevent a creditor within this jurisdiction, from prosecuting an attachment suit against the property of the assignor in Maryland, the bill therefore comes too late after the complainants have stood by without action here, or intervention there, and permitted that suit to ripen into judgment.

That complainants were not parties to that proceeding, or that Scott may not even have been brought before the court in person, are matters of no consequence in so far as the effect of that judgment comes under consideration in this case. Inasmuch as it was a valid judgment of condemnation, subjecting the attached property to the payment of the demand found to exist for that purpose, pronounced by a court of unquestioned jurisdiction in the premises, it would have the same effect if pleaded in defense to an action here, that it has in Maryland. Green *v.* Van Buskirk, 7 Wall., 139, 148; S. C., 5 Wall., 307, 312; Cole *v.* Cunningham, 133 U. S., 107, 133.

For stronger reasons, if possible, no court of another jurisdiction should undertake to thwart its regular execution in the interest of

the party entitled thereto, by exerting coercion upon him when he may happen to be within its power.

In Green *v.* Van Buskirk, *supra*, all of the interested parties were citizens and residents of New York, where the chattel mortgage was made by Bates to Van Buskirk. Green attached the personal property, so conveyed, in the courts of Illinois, where it was then situated, procured its condemnation and sale, and appropriated the proceeds. Van Buskirk sued him in New York to recover the value of the converted property. Van Buskirk was not a party to the attachment suit, nor was Bates by personal service. It was held, nevertheless, that the judgment so obtained, having that effect in Illinois, was a bar to the action.

In the later case of Cole *v.* Cunningham, *supra*, wherein an injunction, issued by a State court of Massachusetts to restrain a citizen of that State from the prosecution of an attachment suit in the State of New York, was upheld, it was said, after quoting with approval from Green *v.* Van Buskirk, that:

"It will be perceived that it was manifestly inadmissible to hold that after Van Buskirk had permitted Green to go to judgment in a proceeding *in rem*, which appropriated the property as belonging to Bates, he could then get judgment against Green for the conversion of what had been so adjudged to him, an adjudication which Van Buskirk had voluntarily declined to litigate in the proper forum, and had not sought in his own State to prevent. It was a contest between two individuals claiming the same property, and that property capable of an actual *situs*, and actually situated in Illinois. The attachment was not only levied in accordance with the laws of Illinois, but the laws of that State affirmatively invalidated the instrument under which Van Buskirk claimed. Clearly, then, the law of the domicile of Van Buskirk, Green and Bates could not overcome such registry and other positive laws of Illinois as were distinctly coercive."

The proceeding in this case is substantially a suit in equity to recover and subject the proceeds of land situated in Maryland, that has been condemned and sold under a judgment of a court of that State, to a demand acquired under an instrument which, by the law of Maryland, had no force or effect as a conveyance of title; and, therefore, comes directly within the rule enounced in Green *v.* — Buskirk, and approved in Cole *v.* Cunningham.

The proper place for the complainants to maintain their claim was in the courts of Maryland which had jurisdiction of the subject-matter, and whose laws exclusively governed its disposition.

They, however, not only kept out of the litigation in Maryland of which they had knowledge in time to join before the judgment of condemnation was rendered, but also stood by and permitted the defendant Keane to undertake the labor and expense of the subsequent litigation with Scott, and his daughters, who claimed the remainder upon the termination of his life estate, that resulted in annulling the conveyance, under which they claimed, as in fraud of creditors, and without which result the condemnation judgment

would have been of little or no value. See Scott *v* Keane, Maryland court of appeals, April term, 1898.

3. It is independently contended by the appellees, in support of the decree overruling the demurrer, that an injunction properly lies to prevent the appellants from appropriating the proceeds of the condemnation judgment in Maryland, and to compel them to bring the same into the proper court of this District for distribution among all the creditors of Scott, on the ground that, by reason of their former acceptance of the assignment, they are estopped to deny its sufficiency as a conveyance of the Maryland land.

It would be sufficient to say that this contention is fully met by what has heretofore been said in respect of the exclusive jurisdiction of the Maryland courts in the premises; for it is an attempt to accomplish indirectly that which cannot be done directly by the courts of this District, namely, to give effect to an instrument, as a conveyance of title in Maryland, that is in contravention of the laws of that State, as well also to prevent the execution of a judgment regularly obtained in that State. A proceeding that would work that result in any manner is beyond the jurisdiction of our courts. The courts of Maryland are open to the maintenance of the same right, and to them the parties must resort for relief.

The case of Kendall *v.* Coke Co., 182 Pa. St., 1, that is relied on by the appellees, is not applicable to all the phases of the question as here presented. It is true that the assignment made in Pennsylvania by a resident debtor was conceded to be insufficient in its terms to pass the complete title to land in Florida under the laws of the latter State. A resident creditor, having accepted benefits under the assignment, was declared estopped to claim against it elsewhere, and an injunction was granted restraining him from prosecuting an attachment suit that he had commenced in Florida. The important distinction between that case and this, is, that the attachment proceedings in Florida had not progressed to judgment of condemnation.

28 In Groves *v.* Rice, 148 N. Y., 227, the parties were all citizens of New York, the property was situated therein, and the familiar principle of estoppel by reason of the acceptance of benefits under the trust was applied, and nothing more.

With great respect for the justly distinguished court that decided the case of Kendall *v.* The Coke Co., *supra*, it seems to us that both the effect of the assignment as a conveyance of the title to the land by virtue of its terms and the manner of its execution, and the question of the party's conduct in giving it effect by way of estoppel, ought to have been submitted for determination by the courts of the State where the land was situated, as was the case in Moore *v.* Church, 70 Iowa, 208. In that case the assignment made in New York by a citizen thereof was in accordance with the law of that State. As a part of the assignment, the assignor made a separate conveyance of the land which was executed in conformity with the law of Iowa, where the land was situated. A creditor in New York became a surety upon the bond of the assignee, and subsequently brought a suit against the assignor in Iowa, and sued out an attach-

ment that was levied upon the said land. He also filed his claim for the debt with the assignee in New York and asked for his distributive share of the estate upon whatever part thereof might remain unsatisfied after crediting the sum that might be realized through his proceeding in Iowa.

The assignment, in so far as it was sought to give it operation in Iowa, was declared void because in contravention of a statute of that State which forbade preferences in an assignment for the benefit of creditors. It was also held that the attaching creditor was not estopped to have the assignment, and the conveyance executed in order to give it effect annulled, by reason of his having become surety for the assignee in New York, or having preferred his claim there against the assigned estate. His conduct, it was said, could go no farther than to estop him to deny the validity of the assignment in New York in respect of the property situated there.

Now it may be, that, in the distribution of the proceeds of the property in the District, the defendants would each be denied participation unless they should first account for the proceeds of the Maryland litigation; or, that they would, at least, be limited therein to their proper proportion after crediting them with the amounts so realized. But these are questions that can only arise on the distribution of the estate when made, and we are not to be understood as expressing any opinion in respect to their determination.

4. In addition to the matters that have been discussed, the bill alleges acts of misconduct on the part of the assignee and prays his removal and the appointment of another. There are also prayers for discovery and for an account by the assignee of property that may have come into his possession in that right. The assignor, Scott, is also called upon for discovery in respect of any property that he may have that is not described in his schedules. These questions are not before us on this appeal, and it may be that the complainants would be entitled to maintain their bill, with or without amendment, for relief therein and perhaps in other particulars.

The decree will therefore be reversed with costs, and the cause remanded, with direction to sustain the demurrer, dissolve the injunction and dismiss the bill as to the appellants, Thomas T. Keane, Alpheus Middleton, The Central National Bank of Washington, Edward O. Whitford and the partnership of Browning & Middleton; and for further proceedings not inconsistent with this opinion. It is so ordered.

Reversed.

29 THURSDAY, *January 12th, A. D.* 1899.

THOMAS T KEANE, HORATIO BROWNING, Alpheus Middleton, The Central National Bank of Washington, and Edward O. Whitford, Appellants,

vs.

GEORGETTE A. CHAMBERLIN, FRANK T. Chamberlin, The Capital Trust Company, Wash. B. Williams, Henry M. Dexter, Gustave Lansburgh and James Lansburgh, the Last Two Trading as Lansburgh & Bro.; Andrew W. Kelley and Edward H. Chamberlin, Trading as Kelley and Chamberlin, and William Galt.

No. 860.
January Term, 1899.

Appeal from the supreme court of the District of Columbia.

This cause came on to be heard on the transcript of record from the supreme court of the District of Columbia, and was argued by counsel; on consideration whereof it is now here ordered, adjudged, and decreed by this court that the decree of the said supreme court in this cause be, and the same is hereby, reversed with costs, and that this cause be, and the same is hereby, remanded to the said supreme court, with directions to sustain the demurrer, dissolve the injunction, and dismiss the bill as to the appellants Thomas T. Keane, Alpheus Middleton, The Central National Bank of Washington, Edward O. Whitford, and the partnership of Browning and Middleton, and for further proceedings not inconsistent with the opinion of this court.

Per MR. JUSTICE SHEPARD.

January 12, 1899.

Court of Appeals, District of Columbia, January Term, 1899.

GEORGETTE A. CHAMBERLIN, FRANK T. CHAMBERLIN, The Capital Trust Company, Wash. B. Williams, Henry M. Dexter, Gustave Lansburgh and James Lansburgh, Trading as Lansburgh & Bro.; Andrew W. Kelley & Edward H. Chamberlin, Trading as Kelley & Chamberlin, and William Galt, Appellants,
vs.
HORATIO BROWNING & ALPHEUS MIDDLETON, Trading as Browning & Middleton; Thomas T. Keane, The Central National Bank of Washington, and Edward O. Whitford.
} No. 882.

Appeal from the supreme court of the District of Columbia.

Filed March 6, 1899.

31 Court of Appeals of the District of Columbia, January Term, 1899.

GEORGETTE A. CHAMBERLIN, FRANK T. CHAMBERLIN, The Capital Trust Company, Wash. B. Williams, Henry M. Dexter, Gustave Lansburgh and James Lansburgh, Trading as Lansburgh & Bro.; Andrew W. Kelley & Edward H. Chamberlin, Trading as Kelley & Chamberlin, and William Galt, Appellants,
vs.
HORATIO BROWNING & ALPHEUS MIDDLETON, Trading as Browning & Middleton; Thomas T. Keane, The Central National Bank of Washington, and Edward O. Whitford.
} No. 882.

Appeal from the supreme court of the District of Columbia.

32 Supreme Court of the District of Columbia.

GEORGETTE A. CHAMBERLIN ET AL.
vs.
HORATIO BROWNING ET AL.
} No. 19686. In Equity.

UNITED STATES OF AMERICA, *District of Columbia*, } *ss:*

Be it remembered that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above entitled cause, to wit:

33 *The Demurrer of the Central National Bank.*

Filed Sep. 24, 1898.

In the Supreme Court of the District of Columbia.

GEORGETTE A. CHAMBERLIN ET AL., Complainants,
vs.
HORATIO BROWNING, THE CENTRAL National Bank of Washington City, *et al.*, Defendants.

No. 19686. In Equity. Doc. 45.

The demurrer of the defendant The Central National Bank of Washington City to the bill of complaint filed in this cause.

This defendant, by protestation, not confessing all or any of the matters and things in the complainants' bill of complaint contained to be true in such manner and form as the same is therein set forth and alleged, demurs to said bill, and for cause of demurrer shows that it appears by the said bill that the same is exhibited against this defendant and several other persons therein named as defendants thereto for distinct matters and causes, in several whereof, as appears by the said bill, this defendant is not in any manner interested or concerned, and that the said bill is altogether multifarious, and that the complainants have not in and by their said bill made or stated such a case as entitles them in a court of equity to any discovery from this defendant or to any relief against it as to the matters contained in the said bill or any of such matters.

Wherefore, and for divers other good causes of demurrer appearing in the said bill, the defendant demurs thereto and asks the judgment of this court whether it shall be compelled to make any further or other answer to the said bill, and prays to be hence dismissed with its reasonable costs.

EDWARDS & BARNARD,
Sol'rs for Def't The Central National Bank of Washington City.

34 We hereby certify that in our opinion the aforegoing demurrer of the defendant The Central National Bank of Washington City to the bill of complaint filed in the above-entitled cause is well founded in law.

EDWARDS & BARNARD,
Solicitors for said Defendant.

DISTRICT OF COLUMBIA, *ss:*

I, Clarence F. Norment, being first duly sworn, on oath state that I am the president of The Central National Bank of Washington City, the above-named defendant; that I have read the aforegoing demurrer to the bill of complaint in the above-entitled cause, and that the same is not interposed for delay.

CLARENCE F. NORMENT.

Subscribed and sworn to before me this twenty-third day of September, A. D. 1898.

[SEAL.] GUY H. JOHNSON,
Notary Public, D. C.

Demurrer of Horatio Browning and Alpheus Middleton.

Filed Sep. 26, 1898.

In the Supreme Court of the District of Columbia.

CHAMBERLIN ET AL. *vs.* BROWNING ET AL. } In Equity. No. 19686.

Now comes the defendants Horatio Browning and Alpheus Middleton, partners, doing business under the firm name of Browning and Middleton, and Horatio Browning, in his own right and as assignee, and by protestation, and not confessing any of the facts alleged in the bill of complaint to be true as charged, demur to the said bill, and say that the complainants therein have not in
35 and by their said bill stated such a case as entitles them to any relief in a court of equity or to any standing in this cause for the alleged purposes of said bill, in that:

1st. Said bill is multifarious.

2nd. That the complainants show no such interest in the property involved as entitles them to file this bill and seek the relief prayed.

3d. Because the court has no jurisdiction to proceed as prayed.

4th. Because of complainants' laches apparent upon said bill, and—

5th. For numerous other reasons apparent upon the face of said bill.

And the said defendants pray that the said bill may be dismissed with costs to them.

ARTHUR PETER,
Solicitor for Def'ts Browning and Middleton.

CITY OF WASHINGTON, *District of Columbia,* } *To wit:*

Horatio Browning and Alpheus Middleton, being duly sworn, on oath say that the annexed demurrer is not interposed for delay.

HORATIO BROWNING.
ALPHEUS MIDDLETON.

Subscribed and sworn to before me this 26th day of ——, —.

J. R. YOUNG, *Clerk,*
By M. A. CLANCY, *Ass't Clerk.*

I hereby certify that in my opinion the aforegoing and annexed demurrer is well founded in point of law.

ARTHUR PETER,
Solicitor for Def'ts Browning and Middleton.

36 *Memorandum.*

January 30, 1899.—Mandate of Court of Appeals reversing decree.

Decree.

Filed Jan. 31, 1899.

In the Supreme Court of the District of Columbia.

GEORGETTE A. CHAMBERLIN ET AL.
vs.
HORATIO BROWNING ET AL. } In Equity. No. 19686.

Upon consideration of the mandate of the Court of Appeals filed herein and in obedience thereto, it is this 31st day of January, 1899, ordered, adjudged, and decreed that the demurrers of the defendants Thomas T. Keane, The Central National Bank of Washington, Edward O. Whitford, and of Alpheus Middleton and Horatio Browning, as partners, doing business as Browning and Middleton, be, and the same are hereby, sustained, the injunction against said defendants is hereby dissolved, and the bill of complaint as against them is dismissed. It is further ordered and decreed that the complainants pay the costs of said several defendants, to be taxed by the clerk, and said defendants may have execution therefor as at law.

It is further ordered that this cause be, and the same is hereby, referred to the auditor to determine and report the damages of said several defendants sustained by reason of the said injunction and which should be awarded them against the complainants and their sureties under their undertaking given upon the granting of said injunction, this cause being retained as against said several named defendants only for the purpose of sustaining and awarding such damages as they have sustained, if any.

W. S. COX, *J.*

37 *Order Granting Appeal from Decree.*

Filed Feb. 11, 1899.

In the Supreme Court of the District of Columbia.

GEORGETTE A. CHAMBERLIN ET AL., Plaintiff-,
vs.
HORATIO BROWNING ET AL., Defendants. } In Equity. No. 19686.

On motion of the plaintiffs, by O. B. Hallam, their solicitor, an appeal is granted them to the Court of Appeals from the decree rendered herein on January 31, 1899, and the penalty of an appeal bond, to cover costs, but not to act as a supersedeas, is fixed at fifty

dollars ($50) or a deposit of that amount may be made in lieu of bond.

This 11th day of February, 1899.

W. S. COX, *J.*

38 In the Supreme Court of the District of Columbia.

GEORGETTE A. CHAMBERLIN ET AL.
vs.
HORATIO BROWNING ET AL. } No. 19686. In Equity.

The President of the United States to Horatio Browning & Alpheus Middleton, trading as Browning & Middleton; Thomas T. Keane, The Central National Bank of Washington, and Edward O. Whitford, Greeting:

You are hereby cited and admonished to be and appear at a Court of Appeals of the District of Columbia, upon the docketing the cause therein under and as directed by the rules of said court, pursuant to an appeal allowed in the supreme court of the District of Columbia on the 11th day of February, 1899, wherein Georgette A. Chamberlin, Frank T. Chamberlin, The Capital Trust Company, Wash. B. Williams, Henry M. Dexter, Gustave Lansburgh and James Lansburgh, trading as Lansburgh & Bro.; Andrew W. Kelley & Edward H. Chamberlin, trading as Kelley & Chamberlin, and William Galt are appellants and you are appellees, to show cause, if any there be, why the decree rendered against the said appellants should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Edward F. Bingham, chief justice of the supreme court of the District of Columbia, this 15 day of February, in the year of our Lord one thousand eight hundred and ninety-nine.

Seal Sup. Ct. D. C.

JOHN R. YOUNG, *Clerk.*

Service of the above citation accepted this 15 day of February, 1899.

A. A. BIRNEY,
Attorney for Appellee Keane.
EDWARDS & BARNARD,
Att'ys for Central Nat'l Bank.
ARTHUR PETER,
Att'y for Whitford and Browning & Middleton.

[Endorsed:] No. 19686. Equity. Georgette A. Chamberlin *et al.* *vs.* Horatio Browning *et al.* Citation. Issued Feb'ry 15, 1899. O. B. Hallam, attorney for appellant-.

39 *Memorandum.*

February 20, 1899.—Appeal bond filed.

Stipulation as to Record.

Filed Feb. 24, 1899.

In the Supreme Court of the District of Columbia.

GEORGETTE A. CHAMBERLIN ET AL., Plaintiffs,
vs.
HORATIO BROWNING ET AL., Defendants. } No. 19686. In Equity.

It is stipulated and agreed between the plaintiffs and the defendants Keane, Browning and Middleton, The Central National Bank of Washington, and Whitford that the record on the appeal shall consist of the record in the Court of Appeals in case No. 860, Keane *vs.* Chamberlin *et al.*, the demurrer of the Central National Bank filed September 24, the demurrers of Browning, Middleton, and Whitford filed September 26, and the proceedings in this court subsequent to the filing of the mandate of the Court of Appeals, including this stipulation, and that the printing of the record in the Court of Appeals is waived upon the filing of an assignment of errors.

O. B. HALLAM,
Attorney for Plaintiffs.
ARTHUR PETER,
Att'y for Keane, Browning & Middleton, and Whitford.
EDWARDS & BARNARD,
For Central National Bank of Washington City.

40 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, *District of Columbia,* } *ss:*

I, John R. Young, clerk of the supreme court of the District of Columbia, do hereby certify that the above and foregoing pages, numbered from 1 to 8, inclusive, contain a true and correct transcript of the record and proceedings had in said court, as per stipulation of counsel filed February 24, 1899, in cause No. 19686, in equity, wherein Georgette A. Chamberlin *et al.* are complainants and Horatio Browning *et al.* are defendants, as the same appear from the files and records of said court now remaining in my custody and control.

In testimony whereof I hereunto subscribe my name and [SEAL.] affix the seal of said court, at the city of Washington, in said District, this 6th day of March, A. D. 1899.

JOHN R. YOUNG, *Clerk.*

41 [Endorsed:] District of Columbia supreme court. No. 882. Georgette A. Chamberlin *et al.*, appellants, *vs.* Horatio Browning *et al.* Court of Appeals, District of Columbia. Filed Mar. 6, 1899. Robert Willett, clerk.

42 In the Court of Appeals of the District of Columbia.

GEORGETTE A. CHAMBERLIN ET AL., Appellants,
vs.
HORATIO BROWNING ET AL., Appellees. } No. 882.

And now comes the appellants and assign the following errors:
1. The court erred in sustaining the demurrers of the appellees.
2. The court erred in dissolving the injunction.
3. The court erred in dismissing the bill as to appellees.
4. The court erred in referring the cause to the auditor to inquire as to damages.

O. B. HALLAM,
Attorney for Appellants.

(Endorsed:) No. 882. Georgette A. Chamberlin *et al. vs.* Horatio Browning *et al.* Assignment of errors. Court of Appeals, District of Columbia. Filed Mar. 10, 1899. Robert Willett, clerk.

43 In the Court of Appeals of the District of Columbia.

GEORGETTE A. CHAMBERLIN ET AL., Appellants,
vs.
HORATIO BROWNING ET AL., Appellees. } No. 882.

And now come the appellants and, having filed their assignment of errors, move the court that the printing of the record in this cause be dispensed with, as per stipulation to that effect contained in the record.

O. B. HALLAM,
Attorney for Appellants.

(Endorsed:) No. 882. Georgette A. Chamberlin *et al. vs.* Horatio Browning *et al.* Motion to dispense with printing of record. Court of Appeals, District of Columbia. Filed Mar. 10, 1899. Robert Willett, clerk.

44 FRIDAY, *March 10th, A. D.* 1899.

GEORGETTE A. CHAMBERLIN, FRANK T. CHAMBERLIN, The Capital Trust Company, Wash. B. Williams, Henry M. Dexter, Gustave Lansburgh and James Lansburgh, Trading as Lansburgh & Bro.; Andrew W. Kelley & Edward H. Chamberlin, Trading as Kelley & Chamberlin, and William Galt, Appellants,
vs.
HORATIO BROWNING & ALPHEUS MIDDLETON, Trading as Browning & Middleton; Thomas T. Keane, The Central National Bank of Washington, and Edward O. Whitford. } No. 882.

On motion of Mr. O. B. Hallam, of counsel for the appellants, it is ordered by the court that the printing of the record in the above-

entitled cause be dispensed with. Whereupon this cause was submitted to the consideration of the court on the transcript of record filed herein.

45 GEORGETTE A. CHAMBERLIN ET AL., Appellants,
vs.
HORATIO BROWNING ET AL., Appellees. } No. 882.

Opinion.

Mr. Justice SHEPARD delivered the opinion of the court:

This is the second appeal in this case. The first was a special appeal allowed on behalf of the appellees herein from an interlocutory decree overruling their demurrers to the complainants' bill and refusing to dissolve an injunction.

On January 3, 1899, the decree appealed from was reversed and the cause remanded with direction to sustain the demurrers, dissolve the injunction, and dismiss the bill as to the appellants named therein. Keane *v.* Chamberlin, 27 W. L. R., 98. Upon the receipt of the mandate the court below on January 31, 1899, entered a final decree in accordance with the opinion of this court, dissolving the injunction and dismissing the bill as to the appellees herein and awarding costs, for which execution was ordered to issue. An order of reference was then made to the auditor to determine and report the damages of the defendants sustained by reason of the injunction, the cause being retained as against the said parties and their sureties only for the purpose of ascertaining and awarding such damages as may have been sustained.

From that decree this appeal has been prosecuted. A stipulation was filed agreeing that the record on this appeal shall consist of the record of the former appeal in this court, together with certain papers filed in the cause after its return to the court below and the final decree aforesaid. It was also agreed that the printing of the record in this court should be waived upon the filing of an assignment of errors.

The appellees concede that the decree is final and agree to the motion of the appellants that the cause be submitted upon the record, as stipulated, without printing the same.

As no new question has been presented and the object of the motion and agreement thereto is to obtain a speedy appeal to
46 the Supreme Court of the United States for the purpose of reviewing the decision of this court made on the former appeal and with as little additional cost as may be practicable, the motion to submit the cause upon the record aforesaid is granted.

For the reasons given in the opinion on the former appeal the decree appealed from is affirmed with costs.

Affirmed.

SETH SHEPARD,
Associate Justice.

47 TUESDAY, *March 14th, A. D.* 1899.

GEORGETTE A. CHAMBERLIN, FRANK T. Chamberlin, The Capital Trust Company, Wash. B. Williams, Henry M. Dexter, Gustave Lansburgh and James Lansburgh, Trading as Lansburgh & Bro.; Andrew W. Kelley & Edward H. Chamberlin, Trading as Kelley & Chamberlin, and William Galt, Appellants,
vs.
HORATIO BROWNING & ALPHEUS Middleton, Trading as Browning & Middleton; Thomas T. Keane, The Central National Bank of Washington, and Edward O. Whitford.
} No. 882. January Term, 1899.

Appeal from the supreme court of the District of Columbia.

This cause came on to be heard on the transcript of record from the supreme court of the District of Columbia and was argued by counsel; on consideration whereof it is now here ordered, adjudged, and decreed by this court that the decree of the said supreme court in this cause be, and the same is hereby, affirmed with costs.

Per MR. JUSTICE SHEPARD.

March 14, 1899.

48 WEDNESDAY, *March 15th, A. D.* 1899.

GEORGETTE A. CHAMBERLIN, FRANK T. CHAMBERLIN, The Capital Trust Company, Wash. B. Williams, Henry M. Dexter, Gustave Lansburgh and James Lansburgh, Trading as Lansburgh & Bro.; Andrew W. Kelley & Edward H. Chamberlin, Trading as Kelley & Chamberlin, and William Galt, Appellants,
vs.
HORATIO BROWNING & ALPHEUS MIDDLETON, Trading as Browning & Middleton; Thomas T. Keane, The Central National Bank of Washington, and Edward O. Whitford.
} No. 882.

On motion of Mr. O. B. Hallam, attorney for the appellants in the above-entitled cause, it is ordered by the court that said appellants be allowed an appeal to the Supreme Court of the United States on giving bond in the sum of three hundred dollars.

49 Know all men by these presents that we, Georgette A. Chamberlin, Frank T. Chamberlin, The Capital Trust Company, Wash. B. Williams, Henry M. Dexter, Lansburgh & Bro., Kelley & Chamberlin, and William Galt, as principals, and John W. Ross, as surety, are held and firmly bound unto Browning & Middleton, the Central National Bank of Washington City, Thomas T. Keane, and Edward O. Whitford in the full and just sum of three hundred dollars ($300.00), to be paid to the said Browning & Middleton, The Central National Bank of Washington City, Thomas T. Keane, and Edward O. Whitford, their certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this — day of March, in the year of our Lord one thousand eight hundred and ninety-nine.

Whereas lately, at a Court of Appeals of the District of Columbia, in a suit depending in said court between said Georgette A. Chamberlin and the other obligors, as appellants, and the said Browning and Middleton and the other obligees, as appellees, a decree was rendered against the said appellants, and the said appellants having obtained an appeal and filed a copy thereof in the clerk's office of the said court to reverse the decree in the aforesaid suit, and a citation directed to the said appellees, citing and admonishing them to be and appear at a Supreme Court of the United States, to be holden at Washington, within 30 days from the date thereof:

Now, the condition of the above obligation is such that if the said Georgette A. Chamberlin, Frank T. Chamberlin, The Capital Trust Company, Wash. B. Williams, Henry M. Dexter, Lansburgh & Bro., Kelley & Chamberlin, & William Galt shall prosecute their appeal to effect and answer all costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

GEORGETTE A. CHAMBERLIN. [SEAL.]
F. T. CHAMBERLIN. [SEAL.]
HENRY M. DEXTER. [SEAL.]
THE CAPITAL TRUST CO.,
WASH. B. WILLIAMS,
LANSBURGH & BRO.,
KELLEY & CHAMBERLIN, AND
WM. GALT,
By O. B. HALLAM, *Att'y.* [SEAL.]
JOHN W. ROSS. [SEAL.]

Sealed and delivered in the presence of—
W. M. HALLAM.

Approved by—
R. H. ALVEY, *Ch. Justice.*

[Endorsed:] No. 882. Georgette A. Chamberlin *et al.*, appellants, *vs.* Horatio Browning *et al.* Bond on appeal to Supreme Court U. S.

Court of Appeals, District of Columbia. Filed Mar. 21, 1899. Robert Willett, clerk.

50 UNITED STATES OF AMERICA, *ss:*

To Horatio Browning & Alpheus Middleton, trading as Browning & Middleton; Thomas T. Keane, the Central National Bank of Washington, and Edmund O. Whitford, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to an order allowing an appeal filed in the clerk's office of the Court of Appeals of the District of Columbia, wherein Georgette A. Chamberlin, Frank T. Chamberlin, The Capital Trust Company, Wash. B. Williams, Henry M. Dexter, Gustave Lansburgh and James Lansburgh, trading as Lansburgh & Bro.; Andrew W. Kelley & Edward H. Chamberlin, trading as Kelley & Chamberlin, and William Galt are appellants and you are appellees, to show cause, if any there be, why the decree rendered against the appellants should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Richard H. Alvey, Chief Justice of the Court of Appeals of the District of Columbia, this 21st day of March, in the year of our Lord one thousand eight hundred and ninety-nine.

R. H. ALVEY,
Chief Justice of the Court of Appeals of the District of Columbia.

Service accepted this 21st M'ch, 1899.

A. A. BIRNEY,
For Browning & Middleton, T. T. Keane, and E. O. Whitford.
EDWARDS & BARNARD,
For Central Nat'l Bank of Washington City.

[Endorsed:] Court of Appeals, District of Columbia. Filed Mar. 21, 1899. Robert Willett, clerk.

51 Court of Appeals of the District of Columbia.

I, Robert Willett, clerk of the Court of Appeals of the District of Columbia, do hereby certify that the foregoing printed and typewritten pages, numbered from 1 to 50, inclusive, contain a true copy of the transcript of the record and proceedings of said Court of Appeals in the cases of Thomas T. Keane *et al.*, appellants, *vs.* Georgette A. Chamberlin *et al.*, and Georgette A. Chamberlin *et al.*, appellants, *vs.* Thomas T. Keane *et al.*, being Nos. 860 & 882, January term, 1899, as the same remain upon the files and records of said Court of Appeals.

Seal Court of Appeals, District of Columbia.

In testimony whereof I hereunto subscribe my name and affix the seal of said Court of Appeals, at the city of Washington, this 31st day of March, A. D. 1899.

ROBERT WILLETT,
Clerk of the Court of Appeals of the District of Columbia.

Endorsed on cover: File No., 17,351. District of Columbia Court of Appeals. Term No., 251. Georgette A. Chamberlin, Frank T. Chamberlin, The Capital Trust Company, *et al.*, appellants, *vs.* Horatio Browning and Alpheus Middleton, trading as Browning & Middleton; Thomas T. Keane, *et al.* Filed April 4th, 1899.